

Karen Hughes

From: Jerke, Candace [cjerke@mt.gov]
Sent: Friday, June 30, 2006 8:14 AM
To: Ben Howell
Subject: Aspen Springs
Attachments: Calc New Market Value cost of growth.xls

Please add this insert to my cost of growth report. Thanks. Candi

6/30/2006

Calc New Market Values for 2003 - 2008

(also included is a sheet for the 1997-2002 appraisal cycle and sheets for MOB's with only one line!!)

Greetings

This spreadsheet is designed to help you project the changes in new assessed MARKET VALUE and VBR, and the need for calculating 'over the counter' MOBS. It will also be helpful when you need to do a BACK BILL, as all the MARKET and TAXABLE values are shown based on the VBR and BASE YEAR ASSESSED values.

Further, you can project the taxes based on **your** projected estimate of changes in the MILL LEVY for future

NEW NEW NEW NEW NEW NEW NEW NEW RESIDENTIAL W NEW NEW NEW NEW NEW NEW

There are new **DROP DOWN BOXes** (see above) to select the **number** of property types **to show** and the **property type** for each one. Also is a NEW drop down box for **PTAP**. (It only affects the first two property types.) Click on the ARROW! THEN, select your option. You can now select up to seven (7) property types to make a calculation. The FIRST set is ONLY for the LAND, however, land values can be entered into any of the other available sets.

The spreadsheet is protected, and only a few cells are un-protected (LIGHT BLUE cells). The BEST way to move around in the spreadsheet to the un-protected cells is to use the TAB key. However, you can still click with your mouse to the desired cell.

You will have to enter the appropriate MILL LEVY for the district for the associated year to project the taxes for each year. You **MUST** enter the MILL LEVY in the following format: e.g., 689.75 Do not place the decimal point at the beginning (the formulas will take care of that).

PLEASE NOTE: For Calculations of Ag and Timber land **VBR's** (2002 base year), please see the sheet: Ag-Forest Template For Calculations for Water Cost, please see the sheet: Water Cost Calc.

State Of Montana

Department of Revenue

Calc New Market Value - 2003 → 2008 ReAppraisal Cycle

NOTE:

Tax Dist 40-5

Geo-code

2

RESIDENTIAL LAND

2002 VBR	2003 ReAppraisal Value	0.1666	0.3332	0.4998	0.6664	0.8330	1.0000
-	-	-	-	-	-	-	-
		31.00	31.40	32.00	32.60	33.20	34.00
		-	-	-	-	-	-
		3,400	3,300	3,220	3,140	3,070	3,010
		-	-	-	-	-	-

2

RESIDENTIAL

2002 VBR	2003 ReAppraisal Value	0.1666	0.3332	0.4998	0.6664	0.8330	1.0000
118,051	132,100	120,391	122,732	125,072	127,413	129,753	132,100
		31.00	31.40	32.00	32.60	33.20	34.00
		83,069	84,194	85,048	85,876	86,675	87,186
		3,400	3,300	3,220	3,140	3,070	3,010
		2,824	2,778	2,739	2,697	2,661	2,624

3

Total VBR	Total ReAppraisal
118,051	132,100
Mill Levy	452.20
Total Taxes	1,277.01

add 20 mills per year (ESTIMATED)

83,069	84,194	85,048	85,876	86,675	87,186
2,824	2,778	2,739	2,697	2,661	2,624
452.20	452.20	452.20	452.20	452.20	452.20
1,277.01	1,256.21	1,238.58	1,219.58	1,203.30	1,186.57

Total TAXABLE MV	87,186
Total TAXABLE IV	2,624
Mill Levy	452.20
Total Taxes	1,186.57

Phase In Value	-
Exemption Rate	34.00
Taxable Market Value	-
Tax Rate	3.010
Taxable Value	-

Phase In Value	132,100
Exemption Rate	34.00
Taxable Market Value	87,186
Tax Rate	3.010
Taxable Value	2,624

State Of Montana
Department of Revenue

Calc New Market Value - Mobile Homes

NOTE:

04-2095-27-2-03-01-8023

Tax Dist 32-3 Geo-code

MOBILE HOME		0.1666	0.3332	0.4998	0.6664	0.8330	1.0000	Mobile Home was deleted in 2000.	
2002 VBR	2003 ReAppraisal Value	2003	2004	2005	2006	2007	2008		
18,118	19,550	18,356	18,595	18,833	19,072	19,310	19,550		
		31.00	31.40	32.00	32.60	33.20	34.00	Phase In Value	
		12,665	12,756	12,806	12,854	12,899	12,903	Exemption Rate	
		3,400	3,300	3,220	3,140	3,070	3,010	Phase In Market Value	
		431	421	412	404	396	388	Tax Rate	
Total VBR	Total ReAppraisal							Phase In Taxable Value	
18,118	19,550	12,665	12,756	12,806	12,854	12,899	12,903	Total TAXABLE MV	
		431	421	412	404	396	388	Total TAXABLE TV	
		569.60	536.39	553.03	549.86	569.86	589.86	Mill Levy	
		245.50	225.82	227.85	222.14	225.66	228.87	Total Taxes	

add 20 mills per year (ESTIMATED)

Department of Revenue

NOTE:

2095-24-3-01-09-0000

Phase in Rate:

	0.25	0.5	0.75	1.0
1999				
	15,302	17,211	19,120	21,030
	16.00	23.00	27.50	31.00
	12,853	13,252	13,862	14,510
	3,710	3,627	3,543	3,460
	477	481	491	502

Phase In Value
Exemption Rate
Taxable Market Value
Tax Rate:
Taxable Value

Phase in Rate:

	0.25	0.5	0.75	1.0
1999		2000	2001	2002
	37,977	44,108	50,239	56,370
	16,00	23,00	27,50	31,00
	31,900	33,963	36,423	38,895
	3,710	3,627	3,543	3,460
	1,183	1,232	1,290	1,346

Phase In Value
Exemption Rate
Taxable Market Value
Tax Rate:
Taxable Value

Phase in Rate:

	0.25	0.5	0.75	1.0
1999				
	-	-	-	-
	16.00	23.00	27.50	31.00
	-	-	-	-
	3.710	3.627	3.543	3.460
	-	-	-	-

Phase In Value
Exemption Rate
Taxable Market Value
Tax Rate:
Taxable Value

44,753	47,215	50,285	53,405
1,660	1,743	1,781	1,848
502.31	522.36	560.06	569.60
833.83	894.80	997.47	1,052.62

Total TAXABLE MV	
Total TAXABLE TV	
Mill Levy	
Total Taxes	

Calc New Market Value cost of growth

State Of Montana
Department of Revenue

Calc New Market Value - Mobile Homes

NOTE:

Geo-code 2199-07-3-01-04-9063

Tax Dist 23-3

MOBILE HOME

1996 VBR	1997 ReAppraisal Value	1997 Market Value	1998 Market Value	Phase in Rate: Remainder to be phased in
29,515	44,952	29,823	30,132	14,320

Total VBR	29,515	29,823	30,132
Total ReAppraisal	44,952	1,145	1,150

Mill Levy	457.04	450.65
Total Taxes	523.31	518.25

0.25	0.5	0.75	1.0
1999	2000	2001	2002
33,837	37,542	41,247	44,952
16.00	23.00	27.50	31.00
28,423	28,907	29,904	31,016
3,710	3,627	3,543	3,460
1,054	1,048	1,059	1,073

28,423	28,907	29,904	31,016
1,054	1,048	1,059	1,073

465.07	491.66	528.13	564.38
490.18	515.26	559.29	605.58

Phase In Value
Exemption Rate
Phase In Market Value
Tax Rate:
Phase In Taxable Value

Total TAXABLE EMV
Total TAXABLE IV

Mill Levy
Total Taxes

**2003 Reappraisal Cycle
Irrigated Lands
Water Cost Calculation Spreadsheet
CAMAS Land Screen**

Geocode

[This entry is optional]

Irrigation Type (F, S or P)

[Enter only the alpha symbol for the Irr. Type]

Total Energy Cost

[Enter Only The Total "Irrigation Type" Energy Cost]

Irrigated Acres

[Enter Total Irrigated Acres By Irrigation Type]

Energy Cost/Acre

[For Informational Purposes Only]

This Is Your 3-Digit
Energy Cost.
Place In The
Percent Influence
Field

This Is Your 1-Digit
Water Cost Code.
Place In The Water
Cost Category
Field

Rotation	3	▼	← [Required For Irrigated Land Valuation]
Timber Zone	2	▼	← [Required For Forestland Valuation]

MESSAGES

New VBR	Acres
\$ -	-
\$ -	-
\$ -	-
\$ -	-

Timber Zones

1	= Northwest
2	= West Central
3	= Southwest
4	= Central
5	= Eastern

VBR Instructions

Introduction:

This spreadsheet is designed to re-calculate agricultural and forestland VBR's. This must be done anytime acreage is changed in an agricultural or forestland use class or in the case of a forestland natural disaster reduction. For a further discussion on when to recalculate VBR's, refer to the Department's procedure on VBR calculations.

Data Entry:

The spreadsheet is menu driven. Enter the land data for the entire parcel. You can enter 1-acre building sites on ag land because that value is derived from the irrigated agricultural schedule. However, you cannot enter 1-acre building sites on nonqualified agricultural or forestland because these are market driven values. Class 4 values must be hand calculated or entered into a different model to determine their VBR. When data-entry is complete, with the exception of irrigated land rotations and water class codes, your land information should match the updated CAMAS record. There are only two fields that staff can manually enter data; the geo-code which is an optional entry and the acres for each land use. Use the drop down menu to select the correct entry for every other field. Each drop down menu has a "blank field" option. The "blank field" option is the only way to delete data from a given field. When the color bar is over the grade, blank field, use types or other kinds of data that you desire, click on the color bar to select that option.

You must enter the 2002 rotation and 2002 water cost code if you are recalculating irrigated land values. You cannot select an irrigated grade from the drop-down menu until you select a rotation. Do not use the 2003 water cost code. You can always leave a rotation code in the rotation field, but if you enter a water cost code on a line that does not contain irrigated land, you will receive an error message.

You must always enter the forest valuation zone if you are recalculating forestland. You cannot select a forestland grade from the drop down menu until you select a forest valuation zone. The grade is indicated in parenthesis. If you are re-calculating the VBR of a forestland parcel due to a natural disaster reduction, the timber loss field in column F must have a "Y" on the line that the reduction occurs. The message screen will indicate a natural disaster reduction for that line. If you are not dealing with a natural disaster loss, always maintain a blank field in the timber loss field (column f) or the new VBR will be incorrect.

The new VBR is broken out by class codes on the template. Enter the recalculated VBR's for each class code into PA S5. Also enter the appropriate reason code in PA for recalculating the VBR.

Hints:

1. Use this spreadsheet like a template and never save the entries unless you want to use the "save as" function to save the record to another folder under a different name. If a hard copy is desired, enter the geo-code and print the sheet when data entry is complete.
2. If all irrigated land in your county is in one rotation, enter the rotation code and re-save the master file. The rotation code can always remain in the document.
3. Enter your county's forest valuation zone and resave the master file. The forest valuation code can always remain in the document.

Karen Hughes

From: Jerke, Candace [cjerke@mt.gov]
Sent: Friday, June 30, 2006 8:25 AM
To: Ben Howell
Subject: Aspen Springs

For some reason the last two lines on my Cost of Growth Report did not get saved. Please add
Please do not approve this subdivision. It will cost everyone in the county.

6/30/2006

JUN 30 2006
1C-06-06-1038
Ravalli County Planning Dept.

Covenants

The covenants that are proposed for the Aspen Springs subdivision are very unusual. They keep the control of the subdivision in the hands of Perry Ashby, President of Wesmont, Inc. In my position as an appraiser I have looked at a large number of covenants, none keep the control in the hands of one person. Besides being undemocratic this ensures that the new homeowners will not have any influence on what happens in this subdivision for 22 years (probably longer). Most home buyers would not question covenants thinking that they would be protecting them when in reality Aspen Springs covenants do not.

Specific areas that I feel are unusual are listed below along with comments:

P. 4 #3 Membership & Voting Rights

The Declarant (Ashby) gets five votes for each lot he owns including any lots identified on the phasing plan whether the final plat for such lot of phase is filed or not.

Most covenants state that each landowner within the Subdivision shall be a member of the Association and shall have one vote. Nothing is ever mentioned about the final plat not being filed.

P. 13 #6 General Restrictions & Covenants part x

Declarant Use. Nothing in this Declaration shall in any way prohibit or limit the Declarant's use of the Real Property for construction offices, sales offices, model homes, construction buildings, shops or otherwise in the pursuit of the development and build out of Aspen Springs, for so long as the Declarant owns one or more lots.

Most covenants do not even mention this.

p. 14 # 7 Single Family Lots part d

... garages cannot exceed a height of 24 feet from grade to the highest point of the structure.

Two story garages are allowed on these little lots so they can block the view of the neighbor. Someone is not going to be happy.

p.18 #10 Architectural Control Committee

An Architectural Control Committee, consisting of three members,.....shall be appointed by Declarant, until such time as Declarant no longer holds an ownership interest in any lot.

Covenants that have a planning or architectural control committee normally require that the members on the committee be owners within the subdivision. In this case the Declarant (Ashby) has control until he sells out all of his interest. He can appoint anyone to this committee.

p. 19 #11 Duration

....be enforceable by the Declarant or the Owner of any Lot

p. 20 #15 Amendment

The Declarant reserves the sole right to amend, modify, make addition to or deletions from this Declaration that it alone deems appropriate, for so long as Declarant owns one or more of the Lots subject to this Declaration.66% of the Owners may amend, modify, make additions to or deletions from this Declaration.

p. 20 #16 Liability of Declarant The Declarant shall have no liability for any of its actions or failures to act.....

So the Declarant (Ashby) controls this whole process. He can do as he pleases, enforce the rules if he wants, charge whatever he wants to charge for road, water, septic, change the rules to please his fancy and has absolutely no liability. Most covenants require a vote of 2/3 to 3/4 of the owners to waive, or modify them. Since the Declarant gets 5 votes for each lot he owns, platted or not why did he even bother with the first part of the Amendment section? Other covenants do not allow the Declarant total control.

In large subdivisions the covenants often state that the county also has the right to enforce the provisions of the covenants. Ravalli County does not have an enforcement provision is the Planning Office, but this may change in the future. Also many covenants have a term listed stating that these covenants are good for 25 years and then are automatically renewable for another 10 years. Sometimes certain provisions in the covenants are listed as not being amendable without prior approval of the County Commission. This is to protect the health, welfare and safety of the residents in the county.

Attached as an appendix are covenants that have examples of better practices. In the Turah Meadows Covenants #5 and #16 are worth comparing. In the Wallace Creek Estates parts V, VII and VIII are worth noting.

I have no idea why the covenants are written this way; but I do know that they do not protect the home buyers of lots in Aspen Springs or other residents in Ravalli County. If the real estate agent does not disclose the deficiencies in these covenants to their clients they could be liable. However the Declarant (Ashby) will never be liable.

As mentioned in the FCAAS report on page 15 under Miscellaneous- Proof of Ownership and Restrictive Covenants, covenants are not a tool that that can be relied on. The covenants that were on this property were removed. These covenants can be removed and the homeowners and Ravalli County will be left holding the bag on a septic system, a water system, roads, etc.

The Aspen Springs Subdivision must be denied because of its effects on public health and safety.

Respectfully submitted

Candace Jerke
Appraiser, State of Montana

RECEIVED

JUN 30 2006
16-06-06-1037
Ravalli County Planning Dept.

Attn: Ben Howell

From: Candi Jerke (329-1431)

26 pages

This goes with my letter on
covenants that I emailed to you on
my lunch hour.

Call me if any of this does not come
through on the fax machine

19
-18

**DECLARATION OF COVENANTS
FOR
TURAH MEADOWS SUBDIVISION**

THIS DECLARATION is made by the undersigned Declarant and is effective on the date it is duly recorded in the records of Missoula County, Montana.

BACKGROUND

Declarant is a landowner of certain real property located in Missoula County, Montana, commonly known as Turah Meadows Subdivision, and more particularly described by the official plat located in the records of Missoula County, Montana, and as duly reconfigured from time to time (the "Subdivision"). The Subdivision is a mixed-use development that is divided into numbered plots of land ("Lots"), with certain Lots designated for residential use and certain Lots designated for light commercial use as shown on the official plat.

Declarant desires to set forth a Declaration of Covenants ("Declaration") that will provide a uniform land use plan for the mutual benefit of all landowners within the Subdivision. Declarant further desires to incorporate Turah Meadow Owners Association, Inc. ("The Association") as a nonprofit, mutual benefit corporation under the laws of the State of Montana to administer the Declaration on behalf of the landowners within the Subdivision. The Turah Meadows Owners Association, Inc. shall be formed before any lot sale has closed.

ACCORDINGLY, Declarant sets forth the Covenants for Turah Meadow Subdivision as follows:

COVENANTS

1. **SCOPE.** This Declaration benefits and burdens all real property and improvements contained within the Subdivision, as it may be duly reconfigured from time to time. The acceptance of a deed or conveyance, the succeeding of title to, the execution of a lease to, or the act of occupancy of a Lot constitutes the ratification of and an agreement to comply with the Declaration, as duly amended from time to time. All property within the Subdivision will be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the terms of the Declaration. The Declaration runs with the land, regardless of whether the Subdivision or the Association changes in nature or ceases to exist, and is binding upon and inures to the benefit of all parties having or acquiring any right, title or interest in the aforesaid real property, and their heirs, successors, representatives, and assigns.

2. **OWNERS ASSOCIATION.** There shall be an owners association known as Turah Meadows Owners Association, Inc. that administers this Declaration and manages the affairs of the Subdivision. The Association will be a nonprofit, mutual benefit corporation with Articles of Incorporation filed with the Montana Secretary of State. Upon incorporation, the Association's initial members will adopt Bylaws to govern the internal operations of the Association. The Association is empowered to transact all business permitted under Montana law and to adopt rules and regulations as it deems appropriate to administer this Declaration and manage the

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Missoula County Victor H Zaler cov
20040909-31

affairs of the Subdivision. Each landowner within the Subdivision shall be a member of the Association and shall be bound by the Articles, Bylaws, and rules of the Association.

The Articles and Bylaws of the Association (including any management plans or other rules generated under the Bylaws) may not be drafted, amended, or otherwise changed or interpreted to be inconsistent with this Declaration. If any such inconsistency occurs, the provisions of this Declaration will prevail.

3. PLANNING COMMITTEE. As more particularly described in the Bylaws, there shall be a Planning Committee within the Association that reviews and approves proposed land uses, site plans, house plans, landscaping, and related issues to ensure compatibility with the Declaration, the Bylaws, and the nature of the Subdivision as a whole. A landowner shall not erect, place, or alter and improvement on a Lot until the Planning Committee reviews the site plan and specifications for that improvement and provides written approval that work can proceed. In its review, the Planning Committee shall consider, among other things, the quality of workmanship and materials, harmony of design and use with existing and planned improvements, exterior color, height, and location with respect to topography and finish grade elevation. Upon completion of work, the Planning Committee shall inspect the improvement and verify compliance with the Declaration and other applicable rules and guidelines.

4. THE SUBDIVISION PROPERTY

- a. Residential Lots. Lots 1 - 67 on the official plat shall be single family residential Lots.
- b. Commercial Lots. Lots C1-C3 on the official plat shall be light commercial Lots, with uses subject to appropriate approval.
- c. Association Ownership. All other property within the Subdivision shall be owned, maintained, and administered by the Association, with costs of maintenance and administration assessable to its members according to the Bylaws. This ownership includes common areas, utility lines, road easements, and all items appurtenant to such property. The Association shall own and maintain the water and sewer systems.
- d. Common Areas. Certain of the areas owned by the Association will be common areas accessible by members of the Association, subject to Association rules and guidelines. Common areas are defined as follows: A. Floodplain, B. Forested Triangle, and C. Meadows, more clearly defined on the official plat.
- e. Riparian Zone. Within the common areas of the Subdivision, there is a Riparian Zone that includes the floodplain area, as indicated on the official plat. There shall be no new structures or other material alterations of the land within the Riparian Zone. Except where necessary for maintenance, motorized vehicles are prohibited within the Riparian Zone. Low impact motorized vehicles up to five (5) feet wide are allowed for maintenance use. Declarant has developed a Riparian Zone Management Plan, attached as Exhibit A and incorporated into this Declaration by reference, which shall guide the Association in its administration

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MISSOULA COUNTY
RECORDS & CLERK
300 N. ZEEB RD.
MISSOULA, MT 59701
406-733-7311

and protection of the Riparian Zone. All common area restrictions in the Riparian Zone shall be perpetual.

- f. **Roads.** The Subdivision contains common routes and roads which are established by easement. No fence or other obstruction is permitted on or within a common road or easement. Likewise, no fence, wall, hedge or shrub planting, or any other structure which obstructs sight lines may be located so near an intersection, corner, or approach that it adversely affects traffic safety.

As more particularly described in its Bylaws, the Association is responsible for maintaining and administering common roads within the Subdivision. Driveways, beginning from the edge of the street to the home, are the sole responsibility of the landowner served by the driveway.

- g. **Forested Triangle.** There shall be no structures built within the Forested Triangle, see utility sewer easement and walkway trail, as indicated on the official plat (B). Roadways and logging are not permitted in this area. Thinning and removal of dead or diseased trees is permitted.

- h. **Meadows.** The area as defined on the official plat as (C). There shall be limited improvements allowed in this area subject to review and approval by the Planning Committee. Examples of acceptable improvements are 1) covered picnic table, 2) an extension of the existing trail system. The community sewer and water systems and maintenance building will be installed in this area. No roadways for vehicular traffic will be allowed to areas other than for servicing the water and sewer systems.

5. **SERVICES.** Declarant shall install a water system and a sewer system to serve the Subdivision. Ownership of each system will transfer to the Association as soon as installation is complete and the system receives all necessary government approvals. Upon transfer, the Association and the Turah Meadows Sewer and Water District will be responsible for administering, maintaining, and improving the systems as they deem necessary, with costs assessable to its members according to the Bylaws and laws governing the District.

6. **MANAGEMENT.** As more particularly described in the Bylaws, the Association shall contract out management of the water and sewer systems and common areas of the Subdivision, with costs assessable to its members. Included among the services to be provided are snow plowing, road maintenance, debris removal, trail maintenance, landscaping maintenance, weed control, mowing, water and sewer testing and maintenance, and on-call response to system failures. The Association shall hire a Department of Environmental Quality licensed or certified water and wastewater system operator to perform the operation and maintenance of the water and sewer systems. Said operator shall also perform the necessary testing and reporting of the results of said testing to the DEQ and/or other required governmental authority.

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06/29/2006 01:34P
Missoula County Vickie N Zeller cov DA-730 Pg-731

7. GENERAL BUILDING REQUIREMENTS. To preserve and protect property values, promote harmony of design, maintain the beauty of the existing landscape, and create a sense of identity within the Subdivision, the following building guidelines are required for all Lots:

- a. **Building Materials.** All buildings or structures must be of permanent construction and constructed of new or suitable used materials. Color, décor, and materials shall be harmonious with the Subdivision and the beauty of its natural landscape.
- b. **Utilities.** All utilities to include natural gas, electricity, telephone, cable must be located underground.
- c. **Fences.** Fenced yards are permitted on the rear of the Residential Lots. Residential fences shall be constructed of chain link, brown or green in color and no higher than 48 inches, landscaping along fence lines will be required to break up straight runs. The planning committee will review plans and furnish guidelines.

Fences are permitted on the commercial lots with each lot reviewed by the planning committee individually.
- d. **Variances.** When literal enforcement of any of the building requirements in this Declaration would result in unique and undue hardship to a landowner, which hardship is not a result of the landowner's own actions, the Planning Committee may consider a variance of the requirement. The variance process is more specifically described in the Bylaws. A variance for one landowner shall not be granted at the expense of the Subdivision as a whole; shall not confer a special privilege denied other similarly situated landowners; and shall not amount to a change to an unpermitted use of a Lot.
- e. **Street Address.** House addresses must be clearly visible from the street. Address signs must be of a reflective material or well illuminated. Numbers must have a minimum height of 4 inches.
- f. **Radon.** New construction must incorporate appropriate plumbing under floor for possible future use if radon mitigation is needed.
- g. **Woodstoves.** Wood burning stoves/fireplaces are not permitted.
- h. **Outdoor Watering.** Underground automated sprinkler systems are required. Builder or Home Owner has 45 days after completion of the home (May through October) to have them installed. The Home Owners Association will assign specific days and times to each home or commercial property to correctly distribute the water usage.



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06/06/2006 01:30P
Sk-738 Pg-731

Missoula County Clerk R. Zeiler COV

8. BUILDING REQUIREMENTS FOR RESIDENTIAL LOTS.

- a. **Permitted Structures.** All improvements on residential Lots are subject to advance written approval by the Planning Committee. No building shall be erected, altered, placed, or permitted to remain on any residential Lot other than a single family residence with a private automobile garage. A residential Lot shall have no more than one (1) residence and one (1) garage located on it. No trailers, mobile homes, pre-manufactured homes, or other non-permanent structures are permitted to remain on any Lot. Structural Insulated Paneling and kit homes may be considered on a case-by-case basis by the Planning Committee. No residence shall be occupied prior to completion of construction.
- b. **Building Plan.** Prior to construction, the landowner shall submit a residential building plan prepared by an approved builder to the Planning Committee. The plan shall address all pertinent building information, including home design and blueprints, garage, driveway, walkways, lighting, and all other features of the home site. The landscaping plan may be submitted to the Planning Committee at a separate time but no later than 30 days before completion of the home. In its review, the Planning Committee may consult and apply appropriate provisions of the Missoula County Zoning or Subdivision Regulations and the Uniform Building Code, as amended from time to time.
- c. **Building Size.** To be reviewed by the Planning Committee.
- d. **Building Location.** Except where expressly exempted by this Declaration, all residences and garages must comply with the following setback and height requirements:
- Minimum front — twenty-five (25) feet from road/utility easement
 - Minimum side — five (5) feet or established easement
 - Minimum rear — ten (10) feet
 - Maximum height — to be determined by the Planning Committee
- e. **Roof Pitch.** The roof pitch of residence and the garage shall have a slope of 5:12 feet or greater.
- f. **Garages.** Private automobile garages shall have a minimum width of twenty-two (22) feet and shall be no smaller than a double-car garage. The square footage of the garage shall not exceed the square footage of the residence. The garage may be attached to or separate from the residence, but must in all cases be constructed of the same exterior materials and color as the residence. A garage detached from the house shall have walls no higher than 12 feet. Garage doors shall not exceed a height of ten (10) feet. A garage shall not be used as a residence.
- g. **Landscaping.** Areas not devoted to structures, driveways, and pathways shall be landscaped and permanently maintained. All areas disturbed by construction will require landscaping, reseeding to the native vegetation and weed control. Landowners may leave natural vegetation in place where appropriate, subject to the weed control

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- h. Driveways. Each residential Lot shall have a driveway that shall be paved from the paved street edge to the house, minimum length of twenty (25) feet. The area of the driveway shall be sufficient for two (2) off-street parking spaces. Driveways shall have a well-drained surface and adequate means of providing for surface runoff.
- i. Roof Construction. Each Residential and Commercial Lot shall comply with Missoula County Subdivision standard regulations regarding roof construction in areas of Wildland/Residential Interface. Use only Class A or B fire-rated roofing materials. See Exhibit C - Missoula County Subdivision Regulations, page 100, Amended 8/4/99.

- a. Permitted Structures. All improvements on commercial Lots are subject to advance written approval by the Planning Committee. No building shall be erected, altered, placed, or permitted to remain on any commercial Lot other than a light use commercial facility and any necessary accessory structure.
- b. Building Plan. Prior to construction, the landowner shall submit a commercial building plan prepared by an approved builder to the Planning Committee. The plan shall address all pertinent building information, including facility design and blueprints, proposed parking, walkways, lighting, landscaping, signs, and all other features of the project. In its review, the Planning Committee may consult and apply appropriate provisions of the Missoula County Zoning or Subdivision Regulations and the Uniform Building Code, as amended from time to time.
- c. Building Size. The Planning Committee shall determine the maximum allowable floor area for a commercial facility on case-by-case basis, depending on the type of use and Lot in question.
- d. Building Location. Except where expressly exempted by this Declaration, all commercial buildings and accessory structures must comply with the following setback and height requirements:

Minimum front — twenty-five (25) feet
Minimum side — zero to ten (0 - 10) feet, to be determined by the Planning Committee
Minimum rear — ten (10) feet
Maximum height — to be determined by the Planning Committee

- e. Off-Street Parking. The Planning Committee shall set the number of off-street parking spaces required for a commercial facility according to the type of

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- ## **10. GENERAL USE LIMITATIONS.**

- a. Subdivision.** There shall be no subdivision of any Lots.

b. Parking. No inoperable vehicles or equipment may be left or allowed to accumulate on any street, parking area, or Lot. On residential Lots, all vehicle parking shall be off-street. Occasionally guests may park on the street, no longer than 3 days at a time.

c. Large Vehicles. Except for temporary loading and unloading purposes, no recreational vehicles, trailers, or service trucks over one-ton may be parked or stored on any street, parking area, or Lot. The Association may, on a case-by-case basis, make exceptions for necessary business vehicles on commercial Lots.

d. Nuisances Safety. Noxious or offensive activities are prohibited within the Subdivision. No property may be used in any way that may endanger the health or safety of or unreasonably disturb other landowners in the Subdivision. Hunting and the discharge of firearms or fireworks are prohibited within the Subdivision.

A 3-4 foot chain link fence will be installed across the back of Lots 1-16. The fence shall not be relocated, disturbed or removed as long as the Turah Gravel Pit remains in operation.

e. Sanitary Restrictions. Each landowner must comply with all applicable laws and regulations, including those of Missoula County and the Montana Department of Health and Environmental Sciences, relating to water supply, sanitation, sewage disposal, and air pollution.

11. USE LIMITATIONS FOR RESIDENTIAL LOTS.

a. Single Family. All residential Lots shall be used for single family residential purposes only. Except as otherwise provided in this Declaration, no commercial activity may occur on a residential Lot.

b. Rentals/Leases. In keeping with the rural, residential character of the Subdivision, a residence may only be rented or leased to a single family. The owner of the residence remains responsible for maintaining his property and ensuring compliance with this Declaration.

c. Home Occupation. A home occupation is a permitted use on all residential Lots. "Home Occupation" is any activity involving the sale of goods or services conducted within the residence which is clearly incidental and subordinate to the residential use, does not change the character of the residence or the Subdivision, and complies with the following requirements:

- i. There may be no window display or other public display of any materials, products, or merchandise of the home occupation;
- ii. No sign may be displayed on the premises which advertises the home occupation and no other advertising media may be used to call attention to the fact that the home is being used for an accessory purpose, telephone listings excepted;

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- iii. There may be no exterior storage of materials, products, merchandise, or machinery of the home occupation;
- iv. The home occupation may not occupy more than twenty-five percent (25%) of the gross floor area of the residence;
- v. The home occupation may not produce light, noise, odor, parking demand, traffic, or any other activity which is inconsistent with the character of the Subdivision;
- vi. The use of large trucks or other commercial vehicles is subject to the "Large Vehicles" and "Parking" limitations set forth above;
- vii. The home occupation may not give rise to use of utilities beyond that normal to the use of a residence; and

However, a home occupation shall not include: restaurants, barbershops or salons, child day care centers, on-site retail sale of goods, kennels or stables, or automotive repair.

- d. Animals. Except where expressly exempted by this Declaration, dogs and cats (and other small domestic pets upon Association approval) are the only animals that may be kept on a residential Lot, with a maximum number of three (3) per residence. Commercial raising or breeding of animals is prohibited. All such animals must be confined within the property of their owner and/or when off the property be leashed and under the immediate control of their owner, not become a nuisance or annoyance to neighbors, and not chase wildlife. A violation of this provision may result in immediate and permanent removal of the offending animal.

12. USE LIMITATIONS FOR COMMERCIAL LOTS.

- a. Commercial Use. All commercial Lots shall be used for approved light commercial uses only, which uses and approval process are more particularly described in the Bylaws. Commercial uses shall be of a type, intensity level, design, and scale which is consistent with the character of the Subdivision.
- b. Outdoor Display or Storage. Outdoor storage or display of goods or equipment may occur only with advance approval of the Planning Committee. Declarant is expressly exempted from this limitation.
- c. Hazardous Materials. No hazardous materials may be used or disposed of in connection with a business without advance notice to and approval of the Association.

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- c. Weeds

d. **Exterior Maintenance.** Landowners shall conduct exterior maintenance of all aspects of their Lots, including painting and repair of structures. In providing exterior maintenance, landowners shall utilize color, material, and landscaping schemes that are harmonious with the character of the Subdivision.

- #### 14. ENVIRONMENTAL CONSIDERATIONS.

- 10 -

- b. Control of Domestic Pets. To minimize wildlife risks, all residential landowners with domestic pets must feed the pets indoors and store the pet food securely in the residence. As noted under "Residential Use Limitations," landowners must confine pets to the property and restrain pets from chasing wildlife.
- c. Native Vegetation. Landowners are encouraged to plant native vegetation on their Lots and should recognize that certain non-native flowers, ornamental shrubs, and fruit trees are particularly susceptible to damage from wildlife. The Developers support all economically feasible efforts to retain the larger, older healthy trees (12 inches in diameter and larger).
- d. Wildland/Residential Interface. Each Lot shall comply with Missoula County Subdivision Regulations for Vegetation Reduction Guidelines for property with a zero percent to 10 percent (0% - 10%) slope. See Exhibit B - Missoula County Subdivision Regulations, pp. 140-41 (Aug. 4, 1999)
- e. Water Use. Landowners shall not remove or divert water from the Subdivision's creeks, streams, ditches, pond, and subsurface areas. Neither shall a landowner alter any water flow channel. Landowners shall obtain water through the Subdivision's water system and may use that water for domestic use, lawn or garden irrigation, or maintenance of the common areas, subject to the Association rules and guidelines. Landowners are prohibited from drilling or using a private well on their lot.
- f. Fertilizer & Herbicide Use. Lots and common areas adjacent to the Riparian Zone are limited to using only organic fertilizers and environmentally safe herbicides. All Lots and common areas will be maintained in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan.

15. ASSESSMENTS AND LIENS. As more particularly described in its Articles and Bylaws, the Association has the power to assess and collect common and other charges (including fines or damages for violations of this Declaration) against each landowner within the Subdivision from time to time. The Association has the power to establish a due date for full payment of such assessments, after which nonpayment is deemed a delinquency. The Association also has the power to establish late charges and interest applicable to payment delinquencies.

- a. Right to Enforce. If a delinquency in payment occurs, the Board of Directors of the Association, or its authorized representative, may enforce payment obligations by: (i) placing a lien of record upon the property of the delinquent landowner; (ii) commencing and maintaining and action at law or in equity; and /or (iii) initiating lien foreclosure by judicial proceedings or through the exercise of the power of sale pursuant to this Paragraph. Suit to recover a money judgment for unpaid assessments and other amounts is maintainable without initiating foreclosure or waiving the Association's lien rights.

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- b. Creation of Lien. Upon delinquency, the delinquent amount, any late charges, interest, and all collection costs incurred (including reasonable attorneys fees) become a continuing lien against the Lot of the delinquent landowner. The lien runs with the land and becomes effective when a Notice of Lien is duly recorded with the Office of the Clerk and Recorder, Missoula County, Montana.
- c. Informal Resolution. Before recording the Notice of Lien, the Association must first deliver a written notice of delinquency and demand for payment to the delinquent landowner and allow the landowner fifteen days after delivery to fully cure the delinquency.
- d. Notice of Default; Foreclosure. When neither informal measures nor the recording of a Notice of Assessment are successful in resolving the delinquency, the Board of Directors of the Association, or its authorized representative, may cause the Lot of a delinquent landowner to be sold in the same manner as a sale is conducted through judicial foreclosure. If the delinquency (including associated costs and attorney fees) is fully cured prior to sale, or prior to completing a judicial foreclosure, the Board of Directors of the Association, or its authorized representative, will record a Satisfaction and Release of the lien with the office of the Clerk and Recorder, Missoula County, Montana, within thirty (30) days of the curing. The Association, acting on behalf of its members, has the power to bid on the Lot at the foreclosure sale and has the power to acquire, hold, lease, mortgage, and convey the same.
- e. Waiver of Exemptions. Each owner does hereby waive, to the extent of any liens created under this paragraph, the benefit of any homestead or exemption laws of the State of Montana in effect at the time any assessment becomes delinquent or any lien is imposed.

16. WAIVER OR MODIFICATION. This Declaration may be waived, amended, restated, or revoked in any respect by approval of the owners of not less than seventy-five percent (75%) of the lots in the Association. A waiver or modification becomes effective upon execution of a written instrument which makes reference to this Declaration and any subsequent amendments and which is acknowledged and duly recorded in Missoula County, Montana. ~~Without prior approval by Missoula County Commissioners. The provisions are 1) Shore Protection, 2) Riparian Management Plan, 3) Living with Wildlife, 4) Water and Sewer Systems.~~

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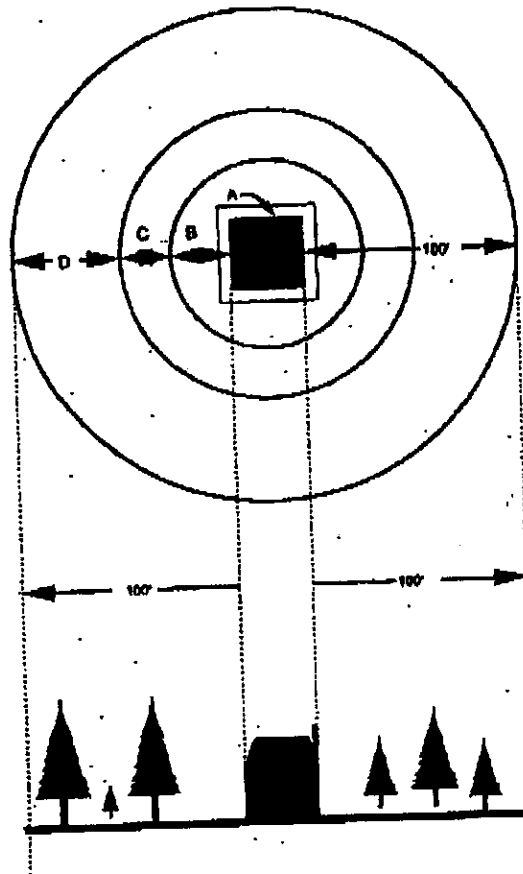
17. GENERAL PROVISIONS.

- a. Headings. The headings used in this Declaration are for convenience of reference only and are not be used interpreting the meaning of any provision.
- b. Severability. The provisions of this Declaration are independent and severable, and the invalidity or unenforceability of any provision does not invalidate the remaining provisions.
- c. Cumulative Remedies. Each remedy provided for in this Declaration is cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration is not a waiver of that remedy.
- d. Violations as Nuisance. Every act or omission in violation of this Declaration constitutes a nuisance and, in addition to all other available remedies, may be abated or enjoined by the Association, or any landowner, board member, or officer.
- e. Indemnification. Each Landowner is liable to the remaining landowners for any damage to the common area or Association property which may be sustained by reason of the negligence of him, members of his family, his contract purchasers, lessees, renters, customers, guests or invitees. Each landowner further agrees for himself and for the members of his family, his contract purchasers, lessees, renters, customers, guest or invitees, to indemnify, defend, and hold harmless each and every other landowner from any claim for personal injury or property damage occurring within the Lot of that particular landowner.
- f. Liberal Construction. The provisions of this Declaration should be liberally construed to effectuate its purpose. Failure to enforce any provision of this Declaration does not constitute a waiver of the right to enforce that provision.
- g. Notification of Sale of Lot and Notice Generally. A landowner must provide the Association with written notification when he conveys his Lot, and the notification must include: the name of the seller and the buyer, their street address of the Lot sold, the buyer's mailing address, and the date of sale. Additionally, each landowner must provide the Association with written notification of the names of any contract purchasers, lessees, renters, or licensees of his Lot.
- h. Number; Gender. The singular includes the plural and vice-versa unless the context requires the contrary; the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.
- i. Attorney Fees. Should suit be instituted to enforce any of the terms of this Declaration, or to obtain any of the remedies provided for herein, the prevailing party is entitled to an award of reasonable attorney fees from any court of competent jurisdiction.

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APPENDIX VIII**APPENDIX VIII**
WILDLAND/RESIDENTIAL INTERFACE
VEGETATION REDUCTION GUIDELINES**VEGETATION REDUCTION GUIDELINES: 0% TO 10% SLOPE**

A = THE FIRST THREE (3) FEET OF B

Maintain an area of non-combustible material - flowers, plants, concrete, gravel, mineral soil, etc.

EXHIBIT B - 1

MISSOULA COUNTY SUBDIVISION REGULATIONS
Amended August 4, 1999

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"WALLACE CREEK ESTATES NO. 2"
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
 THIS DECLARATION, made this 2nd day of June, 2005, by ROY A. HANDLEY TRUST with ROY P. HANDLEY as TRUSTEE, of PO Box 270, Clinton, Montana, 59625, hereinafter called Declarant.

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in the Southwest one-quarter of Section 23, Township 12 North, Range 17 West, Principal Meridian, Missoula County, Montana, hereinafter referred to as "WALLACE CREEK ESTATES NO. 2", and more particularly described as shown on the official plat of said "WALLACE CREEK ESTATES NO. 2", as filed in the office of the Missoula County Clerk and Recorder.

WHEREAS, Declarant desires to place beneficial restrictions, covenants, and conditions upon the real property in said "WALLACE CREEK ESTATES NO. 2", for the use and benefit of itself as present owner and for the use, benefit, and protection of the future owners thereof.

NOW, THEREFORE, Declarant hereby declares that all the property described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property as a highly desirable rural development. These covenants, restrictions, and easements shall run with the real property and shall be binding on all parties having or any acquiring any right, title, or interest in the described property or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

ARTICLE I: DEFINITIONS

Section 1. "Properties" shall mean and refer to that certain real property hereinbefore described, and such other real property as is now or may hereafter be brought within the jurisdiction of the owners.

Section 2. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties, with the exception of dedicated streets and roadway easements. In the event a lot is split then each lot shall be considered as a lot.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract purchasers and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Declarant" shall mean and refer to ROY P. HANDLEY and ROY A. HANDLEY TRUST and its successors and assigns in any of the properties or lots.

ARTICLE II: VOTING

On any question concerning enforcement of these covenants, provision of the means to enforce, or modification of these covenants, or any other matter upon which the owners may lawfully act, all owners shall be entitled to one (1) vote for each lot in which they have an interest. When more than one person holds such interest in any such lot, the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than on (1) vote be cast with respect to any lot.

ARTICLE III: ASSESSMENTS

Section 1. "Creation of personal obligation." The declarants for each lot owned within the properties, covenants to; and each other owner of any lot, by acceptance of a deed or contract for purchase of any lot within the properties, whether or not it shall be so expressed within said deed or contract, is deemed to covenant and agree to and be subject to the assessments and duly enacted by-laws and other rules of this declaration. Each assessment together with interest, costs and reasonable attorney's fees for late payment and collection, as set forth in Section 5. of this Article III, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment, together with interest, costs and reasonable attorney's fees is made. Each such assessment, interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of each lot as of the date of the assessment.

Section 2. "Purpose of assessments" The assessments levied by this declaration shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents on the properties and in particular for the improvement and maintenance of services and facilities devoted to this purpose and related to the use and enjoyment of the owners of these properties.

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Section 3. "Rate of assessments" Both annual and special assessments must be fixed at a uniform rate per lot. However, all undeveloped lots owned by the declarant shall be subject to assessment at one-fourth (1/4) of the amount of the fixed assessment.

Section 4. "Annual assessments" ~~Assessments shall be levied annually on the undeveloped lots of the undeveloped lots of the declarant.~~ Payment of assessments shall be in periodic installments at such intervals as shall be established in the by-laws of this declaration.

Section 5. "Non-payment of assessment" Any assessments or installments on assessments which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The owners of properties subject to this declaration may bring an action at law to collect the amount of the assessment, together with interest, costs, and reasonable attorney's fees for such action.

Section 6. "Exempt property" the following property subject to this declaration shall be exempt from the assessments created herein.

(a) All properties dedicated to and accepted by a public authority or agency.

(b) All properties owned by a charitable organization exempt from the laws of taxation by the laws of the State of Montana. However no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE IV: PROTECTIVE COVENANTS

The following protective covenants are intended to encourage and provide a uniform and orderly plan for the improvement and development of the properties and lots. These covenants are established for the purpose of protecting and enhancing the value, desirability and attractiveness of the real property. They shall constitute a covenant running with the land for each lot within the properties.

Section 1. "Land Use" Lots 1, 2 and 3 in the above described property shall be used for residential purposes only. Lots 4 and 5 shall be used for residential purposes or business, trade, or other commercial activity may be conducted thereon.

Section 2. "Lot Size" No lot shall be subdivided to contain less than one (1.00) acres and no site shall contain less than one (1.00) acres.

Section 3. "Buildings" No building shall be erected, altered, placed or permitted to remain on any lot other than a dwelling, a private garage, and related outbuildings. All structures shall be constructed of new materials except suitable used materials such as brick or beams may be utilized. No old buildings, whether intended for use in whole or in part as the main dwelling structure or for use as a garage or other outbuildings shall be moved upon any lot. All structures shall be completed as to external appearance within one (1) year of commencement of construction. No temporary structure, trailer, mobile home, modular home, pre-manufactured home or other portable home, recreation vehicle, basement, shack, garage, tent, barn or other out building shall be used as a residence on said premises. Provided however, that all existing buildings shall be allowed to remain in place and/or remodeled and that recreational vehicles may be used as a temporary dwelling for owners, guests and their family for a total of fifteen (15) days per year.

Section 4. "Building Size" the ground floor area of the main dwelling house, exclusive of open porches and garages shall not be less than one thousand two hundred (1,200) square feet for a two (2) story house and one thousand four hundred (1,400) square feet for a one (1) story house and one thousand eight hundred (1,800) square feet for a tri-level or other multi-level house. All garages shall be constructed for a minimum of two vehicles.

Section 5. "Building Location" No building shall be located on any lot closer than fifty (50) feet from any street or roadway easement right-of-way line nor closer than thirty (30) feet from any other property line. Provided however, at the discretion of a two-thirds (2/3) vote of the owners of properties subject to this declaration, reasonable modifications of the setback requirements shall be permitted when such action is in the best interests of the owners of the property.

Section 6. "Maintenance" Each property owner shall provide exterior maintenance. The premises, improvements, and appurtenances shall be maintained in a safe, clean, neat and orderly condition. Noxious weeds shall be controlled in accordance with the Montana's County Weed Control Act and Missoula County Noxious Weed Management Plan. Any ground disturbance created by maintenance or construction shall be revegetated with beneficial species at the first appropriate opportunity after maintenance or construction is complete. No rubbish or other waste shall be allowed to accumulate on the property, and no vacant or other lot shall be used as a dump ground or burial pit. All containers for the storage and disposal of garbage shall be kept in a rack for that purpose and shall be kept in a clean and orderly condition. The rack or containers for garbage shall

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be bear-proof, dog-proof and animal-proof. There shall be no storage, parking or maintenance on the lots of heavy equipment, machinery, trucks or junk vehicles.

Section 7. "Nuisances" No noxious or offensive activity shall be carried on or permitted on any of the properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall the property be used in any way or for any purpose which may endanger the health or safety of, or unreasonably disturb the residents of any lot.

Section 8. "Signs" No advertising signs, billboards, or unsightly objects, except for a small "for sale" sign, shall be erected, placed or permitted to remain on any lot. The declarant and his heirs and agents shall be permitted to place signs within the properties to promote their development for a period of ten (10) years from the date of this declaration.

Section 9. "Topsoil and gravel" Gravel pits, topsoil pits or the stockpiling or removal of gravel or topsoil shall not be permitted. This provision however, is not intended to limit or preclude landscaping or the clearing of a residential site or providing access thereto.

Section 10. "Hunting" The pursuit, hunting, taking, shooting or killing of any game animals, game birds or any fur bearing animals for which the State of Montana requires a license or permit is prohibited upon any of the properties.

Section 11. "Animals" Only normal family pets, cattle and horses may be kept on the premises. Such animals shall be confined within the property of their owner and shall not be permitted to become a nuisance or annoyance to neighbors. Animals for the purpose of 4-H and F.F.A. projects are exempted from this covenant. Dogs and cats shall not be allowed to roam due to their negative impacts on wildlife populations. Pet food shall be kept indoors or within kennel areas only, in order to reduce the possibility of conflicts with wildlife populations. The number of animals shall be limited to preclude overuse or misuse of the land, and reference is made to Section 7. "Nuisances".

Section 12. "Vehicles" No vehicles of the following description shall be parked on or allowed to remain on Lots 1, 2 and 3 unless stored in a garage or otherwise screened from view:

- (a) Trucks exceeding sixteen thousand (16,000) pounds gross vehicle weight.
- (b) Recreational vehicles, including but not limited to, motor homes, pickup campers, travel trailers, boats and boat trailers, snowmobiles and snowmobile trailers, motorcycles, all terrain vehicles, go-carts and dune buggies.
- (c) Farm equipment, including but not limited to, tractors, swathers, combines, discs, mowers and harrows.
- (d) Trailers and any other similar units designed to be transported or pulled by motor vehicles.
- (e) Any other unsightly vehicle.

Lots 4 and 5 shall be exempted from this covenant for purposes of business, trade, or other commercial activity.

Section 13. "Sanitary restrictions" The owner of any property shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal and air pollution.

Section 14. "Wildlife" Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed, and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." The following covenants, along with the Nuisances and Animals/Pets sections, are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- (a) Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer or elk feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, and repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- (b) Gardens and fruit trees can attract wildlife. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- (c) Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. Do not set garbage cans out until the morning of garbage pickup.
- (d) Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife such as turkeys. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration" of game animals that may potentially contribute to the transmission of disease or that

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constitutes a threat to public safety." Also homeowners should be aware that deer might occasionally attract mountain lions to the area.

(e) Birdseed can attract bears and should be avoided in this subdivision. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

(f) Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).

(g) Pet food and/or livestock feed should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. When feeding pets and/or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

(h) Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.

(i) Consider boundary fencing that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer or elk becoming entangled in the fence or injuring themselves when trying to jump the fence.

(j) Compost piles could attract skunks and bears. If used they should be kept indoors or built to be wildlife resistant.

(k) Apiaries (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish and Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)

Section 15. "Utilities" All utilities such as, but not limited to, cable television, electricity, telephone and natural gas, shall be installed underground. This provision however, is not intended to affect the present construction of the existing utilities at the date of this declaration.

Section 16. "Exterior Maintenance" Each owner of a lot shall provide exterior maintenance upon such lot and structures, if any, to include painting and repainting the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In providing such exterior maintenance, the Owner shall utilize color and landscaping schemes that are harmonious with the surrounding area and consistent with generally acceptable concepts for desirable residential developments.

Section 17. "Irrigation" All irrigation on the properties shall be accomplished by use of sprinkling systems which comply with all governing laws and regulations relating to water supply, sanitation and sewage disposal.

Section 18. "Boundary Monuments" The Declarant has caused survey monuments to be placed on the corners of each lot. It shall be the responsibility of the owner of each lot to provide for the immediate replacement of any survey monuments that are removed or become lost or obliterated from the lot, by a Professional Land Surveyor registered in the State of Montana.

Section 19. "Turnarounds" All lots shall be provided with the facilities for turning around of normal vehicles within the property boundaries of the lot. Road right-of-way and easements shall not be used.

Section 20. "Waiver of Protest" Acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RSID/SID for improvements to Wallace Creek Road, including but not limited to drainage, paving, dust abatement, road surfacing and widening, curbs and gutters, sidewalks or walkways or other pedestrian facilities, a community sewer and/or community water system, on an equal basis with other properties in the area and the inclusion of the property within the subdivision into the Missoula Urban Transportation District based on benefit, and may be used in lieu of signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein.

Section 21. "Woodstoves" Missoula City-County Air Pollution regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Missoula City/County Health Department.

Section 22. "Private Roadway" The purchaser and/or owner of lots 1, 2, and 3 of "WALLACE CREEK ESTATES NO. 2" understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner and that the County of Missoula is in no way obligated until the private roadway is brought up to the standards of and accepted by the County of Missoula. Dust abatement shall occur on Ikea Peak Road and its associated driveways.

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Section 24. "Fire Protection Standards." The purchaser and or owner of a lot or lots of "WALLACE CREEK ESTATES NO. 2" understands and agrees to the reduction of fire risk by reducing and managing the buildup of fuels and using fire resistant materials and designs for homes and outbuildings. All driveways with a length in excess of 150 feet shall maintain an unobstructed width of not less than 20 feet and a minimum unobstructed height clearance of 13 feet 6 inches and shall be provided with facilities for the turning around of fire apparatus. The property owner shall create a defensible space for fire protection purposes as outlined in Appendix 7, Vegetation Reduction Guidelines of the Missoula County Subdivision Regulations. Purchasers and/or owners agree to the use of "FIRE STANDARDS" as adopted by the Missoula County Commissioners in the Missoula County Subdivision Regulations.

Section 25. "Development Criteria." Development of the lots of "WALLACE CREEK ESTATES NO. 2" should respect the natural resource concerns of the area. Property improvements, such as residences and accessory structures, on individual parcels should be clustered together in a single area of the site and the remainder of the land should be used for grazing, timber needs, wildlife habitat and open space. Such improvements should be sited to limit negative impacts on: water quality and quantity; big game winter range; open space resources; riparian habitat and community types; and threatened, endangered and rare plant and animal species inhabiting (living on) the property. No development shall be allowed on slopes in excess of 25%.

Section 26. "Radon Mitigation." The Environmental Protection Agency has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design.

ARTICLE V: ENFORCEMENT

The undersigned, ~~the declarant~~, the declarant, or any owner of any lot shall have the right to enforce, by an appropriate proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this declaration, and may include proceedings to enjoin the violation and recover damages.

Failure by the declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter do.

However if a suit is not commenced to enjoin the construction of a dwelling house prior to its completion or within thirty (30) days of commencement of construction, whichever is earlier, said dwelling house shall thereafter be deemed to be in compliance with this declaration.

ARTICLE VI: SEVERABILITY

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE VII: TERM

The provisions of this declaration shall be binding for a term of twenty-five (25) years from the date of this declaration, after which time the declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of two-thirds (2/3) of the lots has been recorded, agreeing to change this declaration in whole or in part.

ARTICLE VIII: AMENDMENT

This declaration may be amended by an instrument signed by the owners of ~~two-thirds (2/3)~~ of the lots, which instrument must be recorded with the office of the Missoula County Clerk and Recorder to be effective. Covenants relating to fire protection standards, radon, wildlife, and noxious weed control or revegetation may not be amended, modified, added to or deleted without the written consent of the governing body.

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ARTICLE IX: LIABILITY OF DECLARANTS

The relationship between the Declarants and the property owners shall be deemed to be that of independent contractors and not that of principal and agent, partnership or joint venture. In addition, the Declarants shall have no liability or obligation under this declaration to any person or entity except such liabilities and obligations as the Declarants have expressly assumed herein.

IN WITNESS WHEREOF, this document has been executed the day and year first above written.


as ROY A. HANDLEY TRUST by ROY P. HANDLEY as TRUSTEE - declarant

STATE OF MONTANA)

County of Missoula) ss

On this 2nd day of June, 2006, before me, Gregory S. Martinsen, a Notary Public for the State of Montana, personally appeared ROY P. HANDLEY as TRUSTEE, known to me to be the Trustee of ROY A. HANDLEY TRUST and the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal the day and year in this instrument first above written.




Gregory S. Martinsen - Notary Public for the State of Montana
Residing at Missoula, Montana - Commission expires February 13, 2006.

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